

## **2013 DRAFTING REQUEST**

### **Bill**

Received:	<b>12/13/2012</b>	Received By:	<b>agary</b>
Wanted:	<b>As time permits</b>	Same as LRB:	
For:	<b>Terese Berceau (608) 266-3784</b>	By/Representing:	<b>Annika Petty</b>
May Contact:		Drafter:	<b>agary</b>
Subject:	<b>Fin. Inst. - int. rates/loans</b>	Addl. Drafters:	
		Extra Copies:	<b>PJK</b>

Submit via email: **YES**  
Requester's email: **Rep.Berceau@legis.wisconsin.gov**  
Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

---

### **Pre Topic:**

No specific pre topic given

---

### **Topic:**

Priority of refinance mortgages over subordinate mortgages

---

### **Instructions:**

See attached

---

### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 12/18/2012	scalvin 1/8/2013	phenry 1/8/2013	_____			
/P1	agary 2/14/2013			_____	sbasford 1/8/2013		Local
/1		scalvin 2/14/2013	rschluet 2/15/2013	_____	mbarman 2/15/2013	mbarman 4/5/2013	Local

FE Sent For:

<END>

→ At  
Intro.

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/? agary

*Kpn* *ph/jc*

FE Sent For:

<END>

**Gary, Aaron**

---

**From:** Rep. Berceau  
**Sent:** Thursday, December 13, 2012 3:01 PM  
**To:** Gary, Aaron  
**Subject:** Rep. Berceau drafting request  
**Attachments:** 11-3703P2 (2).pdf

Dear Atty. Gary,

Representative Berceau would like to redraft 2011-2012 LRB-3703/P2 for the 2013-2014 session. This bill relates to the priority of certain refinance mortgages.

Thank you very much and please let me know if you have any questions!

Sincerely,  
Annika Petty

**Annika L. Petty**  
Legislative Assistant  
Office of Representative Terese Berceau  
(608) 266-3784

[apetty@legis.wisconsin.gov](mailto:apetty@legis.wisconsin.gov)

# ***“RESEARCH APPENDIX”***

*... Drafting History Reproduction Request Form ...*

 **DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**


(Request Made By: ALG) (Date: 12 / 18 / 12)

## **Note:**

***BOTH DRAFTS SHOULD HAVE THE  
SAME “REQUESTOR”***


*(exception: companion bills)*



☒  Please transfer the drafting file for  
**2011 LRB** -3703 (For: Rep.) Sen. Berceau  
to the drafting file for

**2013 LRB** -0828 (For: Rep.) Sen. Berceau

-----OR-----

☐  Please copy the drafting file for  
**2013 LRB** / (include the version) (For: Rep. / Sen. \_\_\_\_\_)  
and place it in the drafting file for

**2013 LRB** / (For: Rep. / Sen. \_\_\_\_\_)

 Are These “Companion Bills” ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

(“guts”) from the original file: \_\_\_\_\_





State of Wisconsin  
2011 - 2012 LEGISLATURE

2011 BILL



LRB-~~0001~~-0828/P1  
ARG/jld

Sac

RMNR

B-Note

- 1 AN ACT *to amend* 59.43 (9) (b) and 706.05 (2m) (a); and *to create* 138.059 of the
- 2 statutes; **relating to:** priority of certain refinance mortgages.

***Analysis by the Legislative Reference Bureau***

Under current law, a mortgage on real property creates a lien on the property. Mortgages may be recorded in the office of the register of deeds of the county in which the property is located, which gives the public notice of the lien on the property. Certain duly recorded mortgages have priority over certain other liens on the property, which means that the lienholder with priority has first right to use proceeds from the property to satisfy the debt extended by the lienholder to the property owner.

This bill specifies that a refinance residential mortgage retains the priority of the prior (original) first-lien residential mortgage, including priority over any second-lien mortgage that is created after the original first-lien mortgage and that secures a loan of \$150,000 or less, if all of the following conditions are satisfied:

1. The principal amount of the loan secured by the refinance mortgage does not exceed the outstanding principal balance of the loan secured by the original mortgage plus \$5,000.

2. The interest rate of the loan secured by the refinance mortgage is stated in the refinance mortgage at the time it is recorded and, if the original mortgage secures a fixed-rate loan, does not exceed the interest rate set forth in the mortgage note secured by the original mortgage.

3. The refinance mortgage is recorded and contains specified information on its first page.

an obligation  
owed  
to

**BILL**

The bill includes provisions to facilitate the recording and indexing of refinance mortgages in a way that allows the public to also locate the original mortgages.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 59.43 (9) (b) of the statutes is amended to read:

59.43 (9) (b) In the case of refinance mortgages, as defined in s. 138.059 (1) (d), assignments, satisfactions and partial releases of mortgages, and subordination of mortgages, the index shall also contain the document number or volume and page of the original mortgage instrument whenever that original mortgage instrument is referenced on the document.

SECTION 2. 138.059 of the statutes is created to read:

**138.059 Priority of certain refinance mortgages over subordinate mortgages. (1) DEFINITIONS.** In this section:

(a) "Loan" means a loan secured by a real estate mortgage on a one-family to 4-family dwelling that the borrower uses as his or her principal place of residence.

(b) "Prior mortgage" means a first lien real estate mortgage, given as security for a loan, that is recorded before a subordinate mortgage on the same property.

(c) "Recorded" means recorded or filed in the office of the register of deeds in the county where the real property is located.

(d) "Refinance mortgage" means a real estate mortgage given to secure a refinancing.

(e) "Refinancing" means the replacement of a loan secured by a prior mortgage with a new loan secured by a real estate mortgage and the payment in full of the debt owed under the original loan secured by the prior mortgage.

**BILL**

1 (f) "Subordinate mortgage" means a 2nd lien, or other junior lien, real estate  
2 mortgage given to secure a loan with an original principal amount of not more than  
3 \$150,000.

4 (2) PRIORITY OF REFINANCE MORTGAGE. Notwithstanding ss. 215.21 (4) and ✓  
5 706.11 (1), a refinance mortgage retains the priority of the prior mortgage, including ✓  
6 priority over any subordinate mortgage over which the prior mortgage had priority  
7 before the refinancing, if all of the following apply:

8 (a) The principal amount of the loan secured by the refinance mortgage does  
9 not exceed the outstanding principal balance of the loan secured by the prior  
10 mortgage plus \$5,000.

11 (b) The interest rate of the loan secured by the refinance mortgage is stated in  
12 the refinance mortgage at the time it is recorded and, if the prior mortgage secures  
13 a fixed-rate loan, does not exceed the interest rate set forth in the mortgage note  
14 secured by the prior mortgage.

15 (c) The refinance mortgage is recorded and states on its first page, in bold-faced  
16 capital letters, "THIS IS A REFINANCE MORTGAGE" and contains on its first page  
17 the document number of the prior mortgage instrument or the volume and page  
18 where the prior mortgage instrument is recorded.

19 **SECTION 3.** 706.05<sup>x</sup> (2m) (a) of the statutes is amended to read:

20 706.05 (2m) (a) Except as provided in par. (b), any document submitted for  
21 recording or filing that is to be indexed in the real estate records, any document  
22 submitted for recording or filing that modifies an original mortgage or land contract  
23 and any subordination agreement submitted for recording or filing shall contain the  
24 full legal description of the property to which it relates if the document or  
25 subordination agreement is intended to relate to a particular parcel of land. The

**BILL****SECTION 3**

1 legal description may be included on the document or may be attached to the  
2 document. Any such document, including a refinance mortgage, as defined in s.  
3 138.059 (1) (d),<sup>✓</sup> shall also contain the document number of any original mortgage or  
4 land contract that the document affects and, if given on the original mortgage or land  
5 contract, the volume and page numbers of the original mortgage or land contract.

**SECTION 4. Initial applicability.**

7 (1) This act first applies to refinance mortgages recorded on the effective date  
8 of this subsection.

**SECTION 5. Effective date.**

10 (1) This act takes effect on the first day of the 4th month beginning after  
11 publication.

12 (END)

D-Note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0828/P1dn

ARG:.....

SAC

-date-

ATTN: Annika Petty

Please review the attached draft carefully to ensure that it is consistent with your intent. This is a redraft of 2011 LRB-3703. In reviewing the draft again, I noticed that the \$150,000 amount specified in the definition of "subordinate mortgage" seems to serve no purpose. Under this draft, a refinance mortgage will have the priority of the original (first-lien) mortgage regardless of the principal amount of the second-lien mortgage. If you intend the refinance mortgage to have priority only if the second-lien mortgage is in a principal amount of \$150,000 or less, I will need to make changes to this draft.

I am uncertain whether this legislation will effect a change in law. I do not find any statute directly addressing the issue of the priority of a refinanced first-lien mortgage. However, case law might be interpreted as allowing a refinanced first-lien mortgage to claim the priority of the original first-lien mortgage. See *Home Owners' Loan Corp. v. Papara*, 241 Wis. 112, 118 (Wis. 1942); *Rock River Lumber Corp. v. Universal Mortg. Corp.*, 82 Wis. 2d 235, 243, 246 (Wis. 1978). I recommend consulting DFI or the industry trade associations regarding industry practice and interpretation on this issue.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will add an analysis and convert it to an introducible "/1" draft.

A  
Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0828/P1dn  
ARG:sac:ph

January 8, 2013

ATTN: Annika Petty

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Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

## Gary, Aaron

---

**From:** Gary, Aaron  
**Sent:** Wednesday, February 13, 2013 4:25 PM  
**To:** Clark, Lloyd  
**Subject:** RE: LRB-0828

OK, I'll make that change and then make it a /1.

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

---

**From:** Clark, Lloyd  
**Sent:** Wednesday, February 13, 2013 4:19 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB-0828

Gary,

Looking at your note and the bill, I agree that we can drop the \$150,000 threshold, as it doesn't seem to serve any purpose.

Lloyd Clark  
Office of State Representative Terese Berceau  
608-266-3784  
[lloyd.clark@legis.wisconsin.gov](mailto:lloyd.clark@legis.wisconsin.gov)

---

**From:** Gary, Aaron  
**Sent:** Wednesday, February 13, 2013 4:17 PM  
**To:** Clark, Lloyd  
**Subject:** RE: LRB-0828

OK

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

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**From:** Clark, Lloyd  
**Sent:** Wednesday, February 13, 2013 4:15 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB-0828

Gary,

Please go ahead and put it into an introducible format.

Lloyd Clark  
Office of State Representative Terese Berceau  
608-266-3784



State of Wisconsin  
2013 - 2014 LEGISLATURE

in  
2/14



LRB-0828/1

ARG:sac:ph

soon

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

gen

- 1 AN ACT *to amend* 59.43 (9) (b) and 706.05 (2m) (a); and *to create* 138.059 of the  
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6 **SECTION 4. Initial applicability.**

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8 of this subsection.

9 **SECTION 5. Effective date.**

10 (1) This act takes effect on the first day of the 4th month beginning after  
11 publication.

12 (END)

## Barman, Mike

---

**From:** Gary, Aaron  
**Sent:** Friday, April 05, 2013 12:39 PM  
**To:** Barman, Mike  
**Cc:** Clark, Lloyd  
**Subject:** RE: LRB-0828

Mike,

This is a /1. Can you please jacket for Rep. Berceau? Thanks. Aaron

---

**From:** Clark, Lloyd  
**Sent:** Friday, April 05, 2013 12:34 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB-0828

Aaron,

Can I go ahead and get a jacketed version (seeing how I already sent out the cosponsor)?

Thanks!

Lloyd Clark  
Office of State Representative Terese Berceau  
608-266-3784  
[lloyd.clark@legis.wisconsin.gov](mailto:lloyd.clark@legis.wisconsin.gov)

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Office of State Representative Terese Berceau  
608-266-3784  
[lloyd.clark@legis.wisconsin.gov](mailto:lloyd.clark@legis.wisconsin.gov)

---

**From:** Gary, Aaron  
**Sent:** Wednesday, February 13, 2013 4:12 PM  
**To:** Clark, Lloyd  
**Subject:** LRB-0828

Here it is, with drafter's note.

Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)